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No. 401

SUPREME COURT OF THE UNITED STATES

J. S. GARLINGTON ET UX, *Petitioners*

vs.

A. L. WASSON, *Respondent*

MOTION OF A. L. WASSON ASKING THAT PETITIONERS' APPLICATION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS BE DISMISSED

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No. 405

SUPREME COURT OF THE UNITED STATES

J. S. GARLINGTON ET UX, *Petitioners*

vs.

A. L. WASSON, *Respondent*

MOTION ASKING THE DISMISSAL OF THE APPLICATION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF TEXAS

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1.

Brief Statement of the Nature of the Cause

A.

Prior to December the 31st, 1939, J. S. Garlington and wife, Jennie L. Garlington, caused to be filed under the provisions of the Frazier-Lempke Act, in the Bankruptcy Court at Abilene, Northern District of Texas, their petition under Sec. 75 in due form to obtain the privileges under such Act of Congress. (Tr. p. 67.)

After the filing of such Petition under the terms and provisions of the Frazier-Lempke Act, A. L. Wasson, the holder of a mortgage on four tracts of land (only a part of the real estate of the Petitioners given in their Petition as the estate to be administered), presented his Motion to have such mortgaged land released or sold in satisfaction of his mortgage, and Petitioners, J. S. Garlington and Jennie L. Garlington, and A. L. Wasson joined issue, and the United States District Court, after hearing the pleadings and the evidence thereon, entered the final judgment on December the 4th, 1939. (Tr. 58-60.)

In this judgment by Hon. T. Whitfield Davidson, Judge of the United States District Court for the Northern District of Texas, the court held, among other matters, the following facts:

That A. L. Wasson held a first lien against the land in question for the sum of $14,788.24; and a second lien for the sum of $5,385.25.

That the Farm Debtor purchased this land Sept. 1, 1927, and contracted to pay the sum of $14,920.00,

and that the purchase money was represented entirely in the form of notes for the security of which the mortgages were given.

That the Farm Debtor had the unmolested use of the land in question from September 1st, 1937, to December 4th, 1939.

That he had paid no part of the principal.

That he had paid no part of the interest on the first lien.

That he was in default in the payment of the interest on the second lien indebtedness.

That he was in default in the payment of the State and County taxes on the land in the amount of $343.22.

That since September 1st, 1937, Farm-Debtor has done nothing to enhance the value of the land, and has permitted the improvements thereon to deteriorate in value.

That there is no equity in said land above the indebtedness.

That it would be burdensome to the estate for this Court to administer said land.

That it would be to the best interests of the estate (the remaining portion not discharged), and beneficial thereto, to abandon this land to the holder of the said indebtedness for the purpose of pursuing a foreclosure outside of the jurisdiction of this Court.

Then followed the order of the trial Court to the effect that such portion of the estate be released unto the said holder of the mortgages, A. L. Wasson, that he be "permitted to foreclose his liens in the State Court

or otherwise in accordance with his notes and deeds of trusts and contracts with Farm-Debtor outside the jurisdiction of this Court."

(Tr. pp. 58 to 60; and copied in full in this Answer as Exhibit A for the convenience of the Court.)

B.

Thereafter, the Petitioners prosecuted no appeal to the Circuit Court of Appeals for the Fifth Circuit, and therefore they acquiesced in the above and foregoing final judgment of the District Court for the Northern District of Texas.

C.

Thereafter, A. L. Wasson, under the terms of the Deed of Trust and Contract with the said J. S. Garlington and wife, Jennie L. Garlington, proceeded to foreclose, such Notice being the first step in such procedure, being posted December the 6th, 1939. (Tr. p. 57.)

D.

That thereafter the land was duly sold at public auction (Tr. p. 54), with the son and partner present at the sale (Tr. pp. 33 and 34).

E.

That A. L. Wasson filed an original suit in the State District Court January 3rd, 1940, for the purpose of judicially establishing the validity of the sale of the land under the terms of the Deed of Trust and clearing any cloud from the title, naming J. S. Garlington

and Jennie L. Garlington defendants, and sequestered the land on said date and obtained possession thereof (Tr. pp. 1 to 8).

F.

The defendants resisted going to trial to such an extent as to cause plaintiff A. L. Wasson to proceed on two different occasions by way of mandamus. (145 S. W. (2d) 915, and 149 S. W. (2d) 1041.)

G.

That on May 24th, 1941, the State District Court rendered judgment in favor of A. L. Wasson, and against defendants therein, J. S. Garlington and Jennie L. Garlington, for this land, confirming the sale thereof had under the terms of the Deed of Trust, and adjudging the title and possession rightfully in the plaintiff thereof (Tr. pp. 22 and 23).

H.

That no money judgment against the said defendants (save and except for costs) was taken (Tr. p. 23).

I.

The defendants therein attempted to take the matter to the Court of Civil Appeals, at Eastland, Texas, for a review, but altogether failed to present their brief, and the said appellate court, for want of prosecution, dismissed such appeal. On pages 87 and 88 of the Transcript, such judgment of the Court of Civil Appeals is shown in full, and it will be noted that the opinion does not discuss the construction of the Frazier-Lempke

Act of Congress, and the cause was decided wholly on a non-Federal question. Such opinion and judgment of the appellate court is copied in this brief in full for the convenience of the Court, and is found herein as Exhibit B, in the Appendix of this Answer and Brief.

J.

That after the dismissal of the appeal, as aforesaid, the Petitioners, J. S. Garlington and wife, Jennie L. Garlington, presented their application to the Supreme Court of Texas for a Writ of Error, which was refused (Tr. pp. 94 and 95). That on the Motion for a Rehearing, the Supreme Court overruled the same (Tr. p. 104). Copy of the Decree of the Supreme Court refusing the Application for a Writ of Error is copied for convenience in the Appendix of this Answer as Exhibit C; and the Order Overruling the Motion for a Rehearing is copied therein as Exhibit D.

2.

Point One:

The Petitioners failed to prosecute their cause, after the final decision of the United States District Court, Abilene, in the Northern District of Texas, by way of an appeal to the Fifth Circuit, and thus cannot be heard to complain now of irregularities in the procedure had in the administration of that portion of the estate now under question.

The Honorable T. Whitfield Davidson, District Judge, held, in the judgment of December the 4th, 1939, that the land should be sold. The Court had in mind,

no doubt, the Subdivision 3 of Section 203 (s) in Title 11, of the Frazier-Lempke Act:

> "At the end of three years, or prior thereto, the debtor may pay into court the amount of the appraisal of the property of which he retains possession, including the amount of encumbrances on his exemptions, up to the amount of the appraisal, less the amount paid on principal: Provided, *That upon request of any secured or unsecured creditor, or upon request of the debtor, the court shall cause a reappraisal of the debtor's property, or in its discretion set a date for hearing, and after such hearing, fix the value of the property, in accordance with the evidence submited, and the debtor shall then pay the value so arrived at into court, less payments made on the principal, for distribution to all secured and unsecured creditors, as their interest may appear, and thereupon the court shall, by an order, turn over full possession and title of said property, free and clear of encumbrances to the debtor: Provided, That upon request in writing by any secured creditor or creditors, the court shall order the property upon which such secured creditors have a lien to be sold at public auction.* The debtor shall have ninety days to reedeem any property sold at such sale, by paying the amount for which any such property was sold, together with 5 per centum per annum interest, into court, and he may apply for his discharge, as provided for by this Act. If, however, the debtor at any time fails to comply with the provisions of this section, or with any orders of the court made pursuant to this section, or is unable to refinance himself within three years, the court may order the appointment of a trustee, and order the prop-

erty sold or otherwise disposed of as provided for in this Act."

After a hearing on pleadings, the evidence, as found by the trial Court, showed that it would be beneficial to the estate to have the property sold for the liquidation of the secured indebtedness.

It is true that the above and foregoing provision contemplates a sale of such property by the appointment of a Trustee by the Court, but the irregularity of allowing a sale in some other manner that meets the ends of justice and the purpose of the provision is not such an irregularity as to make the sale void, for the reason the Petitioners herein did not at the time object to the action of the trial Court on such irregularity, and did not appeal the cause to the Circuit Court of Appeals for the purpose of correcting the mode and manner of sale of the land secured by the indebtedness.

Then again, Petitioners allowed the State Court to proceed to the adjudication of the regularity of the foreclosure under the Deed of Trust, and waived the remedy of an injunction from the Federal Court. In other words, the Petitioners waived any right they had whatsoever in having the land sold by and through a Trustee appointed by the Federal District Court, and acquiesced in and impliedly agreed to the procedure of a sale by the Trustee under the terms of the Deed of Trust, and to the jurisdiction of the State District Court, by waiving an appeal from the decision of the Federal Court of December 4th, 1939, and the failure to attempt to restrain the action of the State Court in further administering on this portion of the Debtor's estate.

Then, thereafter, Petitioners failed to prosecute their cause, setting up their defense upon which they claim jurisdiction of this Supreme Court now, to the Court of Civil Appeals, and therefore to the Supreme Court of Texas.

They are guilty of laches, in both the Federal Court and the State Courts, and now asks of this Court remedies that they might have had a chance to have the appellate Federal and State Courts to pass on and determine, but through their own laches allowed their rights to fall by the wayside, for it will be noted that the Court of Civil Appeals never took jurisdiction on the merits of the cause because of the negligence of the Appellants (Petitioners here), and dismissed the appeal and the Supreme Court of Texas affirmed (in a negative manner by refusing to allow the application for a writ of error) the dismissal of the appeal by the Court of Civil Appeals.

Point Two:

Respondent, A. L. Wasson, admits that there was an irregularity in the procedure of the Federal District Court in releasing the land secured by this mortgage from the Debtor's estate for the purposes of foreclosing the lien. But Respondent submits that such irregularity is one only of procedure, and it cannot be attacked collaterally as is attempted indirectly herein. In fact, the procedure is not complained of in the light of its being an irregularity; Petitioners are making the point that the Federal District Court does not have any authority to dispose of any portion of the Debtor's estate under any circumstances till after the expiration

of three years, and that such a disposal (irregular or in accordance with the above quoted provision) before the allotted time, is absolutely void and a nullity in every respect. This is the Peitioners' theory of their cause, it seems, and the grounds and reasons impliedly assigned by them for not appealing from the judgment of the Federal Trial Court of December the 4th, 1939.

Respondent herein takes the position that the trial Court, under the findings set out in the Judgment of December the 4th, 1939, could, before the expiration of three years, dispose of a portion of the estate, and further that the only remedy Petitioners had at that time was an appeal to the Circuit Court of Appeals for the Fifth Circuit. But the Petitioners took their chance in the trial of the issue as revealed in the Judgment of December the 4th in the Federal Court, failing to appeal, and then again took their chance in the procedure leading to an adverse judgment in the State District Court of May the 24th, 1941, and failing again to prosecute their appeal to the Appellate Courts of the State, and they are now in no position to ask for relief under the application to the Supreme Court of the United States for a Writ of Certiorari.

Point Three:

It is submitted that the Federal Trial Court has the power under Title 11, Section 203 (s), Subdv. 3, above quoted to make a sale of part of the real estate found to be under the circumstances set out in the findings of the trial Court, and that a trial, joined by all parties concerned, resulting in an adverse decision, not appealed from, is binding on all parties to the issue so formed and tried.

It is submitted, in this statement of the position of the Respondent, that the trial Court has the authority to dispose of that portion of the estate of a Farm Debtor that is a financial burden on the operation of the remaining portion of the estate.

And that a failure to appeal from such a judgment is to acquiesce in it as a final judgment.

Point Four:

There was no final judgment of the Supreme Court of Texas involving the consideration or construction of the Frazier-Lempke Act, and therefore the Supreme Court of the United States does not have the authority to grant the application for a writ of certiorari.

There was no final judgment of the Court of Civil Appeals of the State of Texas involving the consideration or construction of the Frazier-Lempke Act, and therefore the refusal of the Supreme Court of Texas to grant a writ of error to the Court of Civil Appeals did not impliedly or otherwise involve a consideration or construction of the act of Congress under the Frazier-Lempke Act.

The holding of both State Appellate Courts was to the effect that the cause had never been appealed and had not been brought up in such a form as to call for a consideration of the assignments of error in the appeal, and *the appeal was dismissed.*

It is the unvarying holding of the Supreme Court of the United States that an Application for a Writ of Certiorari is grantable only when the State Court of the last resort has rendered an opinion based upon a construction of a Federal Law.

In other words, the Supreme Court of the United States, under the Statute relating to writs of certiorari, has no authority to grant this application herein for the reason it is not shown that the Appellate Courts of the State of Texas in anywise based their actions on the construction of the Frazier-Lempke Act.

The leading case on the point, though the Statute has in some respects been amended since such date, is *Crowell v. Randell*, 10 Pet. U. S. 368, 9 L. Ed. 458.

In the case of *Adams v. Russell*, 229 U. S. 353, 57 L. Ed. 1224, it is made plain that to authorize the granting of an application for a writ of certiorari, the decision and opinion of the Appellate State Court must show that the adverse decision turned on a Federal question:

> "The petition was denied without opinion, and it is left indefinite upon what grounds—whether the Court entertained the views adverse to plaintiff in error's on the Federal Question, or whether it considered its former decision determined his rights; whether, *as a matter of procedure*, a re-

hearing was his remedy, or whether the new claim of 'good time' allowance was untenable under the statute."

In the case of *Eustis v. Bolles*, 150 U. S. 361, 37 L. Ed. 1111, the Court was dealing with a final judgment of the higher State Court, wherein there was a Federal and also a State question, and the Court held that if the State issue was sufficient to sustain the holding of the State Court, then regardless of the presence of the Federal question, the Supreme Court of the United States did not have any jurisdiction to review the case.

In the case at bar, the final decision was made May the 24th, 1941, in the District Court of Howard County, and evidently the time has expired in which to apply for a writ of certiorari to the State District Court, even if such were permissible. In effect there was no appeal from such judgment of the State District Court, due wholly to the laches of the Petitioners herein, and the Appellate Courts of the State of Texas acted on the matter of procedure only in dismissing the appeal.

In the case of *Mississippi & M. R. Co. v. Rock*, 4 Wall. 177, 18 L. Ed. 381, there was a possibility of two grounds of decision, Federal and State, and this Court declined to review the judgment.

Keeping in mind that the case at bar turned purely on the procedure prevailing in the State Courts of Texas, and under such procedure the Appellant must file a brief in order to secure the attention and consideration of the Appellate Courts, and that the Appellants, J. S. Garlington and wife, Jennie Garlington, failed to do so, it logically and legally followed the

Texas Appellate Courts dismissed their appeal; and also keeping in mind that the dispostion of the cause was made on its merits in the trial Court and was final there, the Appellants' cause was disposed of by the Appellate Courts wholly on a non-Federal issue. Speaking of the rule discussed under this Point Four, Justice McKenna, in the *Adams v. Russell* case, stated:

> "The rule is a salutary one in view of the different jurisdictions of the state courts and of this court. It leaves in both the full plentitude of their powers. It permits no evasion by the state court of the responsibility of determining the Federal question if necessary to be determined; it permits no assumption by this court of jurisdiction to review the decision of local questions. The sufficiency of the local question to sustain the judgment rendered, and the necessity for the determination of the Federal question necessarily we have to consider, but, as was said in Johnson v. Risk: 'Where a defense is distinctly made, resting on local statutes, we should not, in order to reach a Federal question, resort to critical conjecture as to the action of the court in the disposition of such defense.' "

A writ of certiorari does not lie unless the Petitioners have caused the State Supreme Court to pass on the Federal question sought to be decided under the writ of certiorari.

In the instance at bar, the Petitioners failed to cause the Court of Civil Appeals of Texas to pass upon the Federal issue, and therefore the Supreme Court of Texas could not make any decision thereon, not having the authority under the law. No one is at fault, save

and except the Petitioners, who failed because of their own negligence to present the case in the proper form and in the allotted time to the Court of Civil Appeals. It is the same as if the Petitioners had duly appealed and failed to present an assignment involving a Federal question, and then thereafter sought a writ of certiorari.

This doctrine is stated in the case of *Hiawassee River Power Co. v. Carolina-Tennessee Power Co.*, 252 U. S. 351, 56 L. Ed. 601:

> "If a general statement that the ruling of the state court was against the 14th Amendment were a sufficient specification of the claim of a right under the Constitution to give this court jurisdiction (see Clarke v. McDade, 165 U. S. 168, 172, 41 L. ed. 673, 674, 17 Sup. Ct. Rep. 284; Capital City Dairy Co. v. Ohio, 183 U. S. 238, 248, 46 L. ed. 171, 176, 22 Sup. Ct. Rep. 120; Marvin v. Trout, 199 U. S. 212, 217, 224, 50 L. ed. 157, 159, 161, 26 Sup. Ct. Rep. 31) still the basis for a review by this court is wholly lacking here. The 14th Amendment was mentioned only in the trial court. In the Supreme Court of the state no mention of it in the assignment of errors; nor was it, as far as appears by the record, otherwise presented to or passed upon by the court. * * *
>
> "We have no occasion, therefore, to consider whether the claim of denial of rights under the 14th Amendment was substantial in character which is required to support a writ of error. Equitable Life Assur. Soc. v. Brown, 187 U. S. 308, 311, 47 L. ed. 190, 192, 23 Sup. Ct. Rep. 123, Compare Hendersonville Light & P. Co. v. Blue Ridge Interurban R. Co., 243 U. S. 563, 61 L. ed. 900, 37 Sup. Ct. Rep. 440."

In other words, the Federal question apparently was raised in the trial Court but was not passed on in the State Appellate Court:

> "In the Supreme Court of the State no mention was made of it in the assignments of errors; nor was it, so far as appears by the record, otherwise presented to *or passed* on by that Court."

It seems reasonable that the Petitioners who failed to prepare their appeal in such due time to have the Federal issue, if there were to be one, passed on by the Appellate Courts of the State of Texas, are in the same identical position as was the Hiawassee River Power Company in failing to make proper assignments involving a Federal question and having and procuring the Appellate Court to pass on such issue.

We submit that in order for Petitioners to invoke the authority of the Supreme Court of the United States, they must have procured a final judgment of the Supreme Court of Texas wherein such Court passed on and decided a Federal question, or affirmed and made a final decision of the Court of Civil Appeals of the State of Texas wherein a Federal issue was the basis of such judgment.

Petitioners have failed to do so. It was their own oversight, negligence, and laches, and now they are not in a position to ask the exercise of the authority of the Supreme Court on an issue that has not been decided in this case by the Appellate Courts of the State of Texas, and has never been before such Court or Courts.

It may be contended by the Petitioners now before this Court, that the mere allegations in their application to the Supreme Court of Texas a Federal question is invoked, or that in their Motion for a Rehearing on their application to that Court they outlined a Federal question, and therefore these acts of Petitioners would give to this Honorable Supreme Court jurisdiction to grant the application for a writ of certiorari.

But such a view is untenable. The Texas Appellate Courts *must pass on a Federal question.* In this instance the Appellate Courts of Texas were unable to pass on any Federal question, or any issue involving the merits and non-merits of the appeal, for the reason, in effect, there was no appeal.

Any way such viewpoint of the Petitioners is untenable and has been decided against them in: *Bowe v. Scott,* 233 U. S. 658, 58 L. Ed. 1141, and also in *St. Louis & S. F. R. Co. v. Atchison, T. and S. F. R. Co.,* 240 U. S. 240, 60 L. Ed. 622.

Prayer:

Obviously the Application for a Writ of Certiorari should be denied; and comes now Respondent, A. L. Wasson, and prays the Court to dismiss Petitioners' Application, and assess the costs accordingly.

Clyde E Thomas

(Clyde E. Thomas)

Attorney for Respondent, A. L. Wasson,
First National Bank Bldg.,
Big Spring, Texas.

EXHIBIT A

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF TEXAS

Number 1864

In the Matter of J. S. Garlington, et ux., Farm Debtor

In Proceedings for Composition and Extension
under Section No. 75

At Lubbock, Texas, in said district, on the 27th day of November, 1939, and December 4, 1939, came on to be heard the petition of A. L. Wasson of Big Spring, Texas, a secured creditor of Farm Debtor, that this case be dismissed and that Farm Debtor be denied further relief under the Bankruptcy Act, and also the alternative motion of said A. L. Wasson that the security for his debts, consisting of real estate, be discharged from the administration of this Court, and that the same be abandoned to him, and that he be permitted to pursue his remedies in the State Court and foreclose his liens against said land as provided for in said notes and deeds of trust;

And the Court, after having heard the pleadings, evidence and argument of counsel, is of the opinion and finds:

FIRST

That the said A. L. Wasson is the present legal and (fol. 84) equitable owner and holder of a valid, subsisting and unpaid first lien indebtedness amounting

to the sum of Fourteen Thousand Seven Hundred Eighty-Eight and 24/100 ($14788.24) Dollars, principal and interest, as of this date on the lands hereinafter described.

SECOND

That the said A. L. Wasson is the present legal and equitable owner and holder of a valid, subsisting and unpaid second lien indebtedness amounting to the sum of Five Thousand Three -- Eighty-five and 25/100 ($5385.25) Dollars, principal and interest, on said land as of this date.

THIRD

That said land is described as follows: Being Sections Numbers Twenty (20), Twenty-one (21), Twenty-two (22), and Twenty-three, (23), in Block Number Twenty-five (25), of the H. & T. C. Railway Company Survey in Howard County, Texas.

FOURTH

That said Farm Debtor purchased said land on September 1st, 1927, and contracted to pay therefor the sum of Seventeen Thousand Nine Hundred Twenty and No/100 ($17,820.00) Dollars, the purchase money being represented entirely by the principal of the notes forming the indebtedness mentioned in paragraphs First and Second hereof.

FIFTH

That said Farm Debtor has had the unmolested use and enjoyment of said land since said September 1st,

1937, and has paid no part of the principal of the purchase price of said land; that he has paid no part of the interest on the first lien indebetdness; that he is in default in the payment of interest on the second lien indebtedness; that he is in default in the payment of State and County taxes on said land to the amount of Three Hundred Forty Three and 22/100 ($343.22) Dollars.

SIXTH

That since September 1st, 1937, Farm Debtor has done nothing to enhance the value of said land but has permitted the improvements thereon to deteriorate in value.

SEVENTH

That there is no equity in said land above said indebtedness.

EIGHTH

That it would be burdensome to the estate for this Court to administer said land.

NINTH

That it would be beneficial to and for the best interest of this estate that said land be discharged from this proceeding and withdrawn from administration herein and that the same be abandoned to the holder of said indebtedness and that such holder be permitted to pursue his remedies outside the jurisdiction of this Court.

It is therefore Ordered, Adjudged and Decreed by

the Court that the motion of A. L. Wasson that the land described as Sections Numbers Twenty (20), Twenty-one (21), Twenty-two (22), and Twenty-Three (23), in Block Number Twenty-Five (25), of the H. & T. C. Railway Company Survey in Howard County, Texas, as security for his debts, be discharged from the administration of this Court, and that the same be abandoned to him, and that he be permitted to foreclose his liens in the State Court or otherwise as provided for in his notes and deeds of trust, be and it is hereby in all things Sustained and Confirmed and said land is hereby in all things Sustained and Confirmed and said land is hereby discharged from the administration of this Court, and abandoned to said Creditor, A. L. Wasson, and he is hereby permitted to foreclose his liens in the State Court or otherwise in accordance with his notes and deeds of trust and contracts with Farm Debtor outside the jurisdiction of this Court.

(fol. 86) It is further ordered, adjudged and decreed by the Court that in the event farm debtor tenders to A. L. Wasson the full amount of the principal and interest due together with the additional interest to accrue, at the time of such tender, plus the sum of Eleven Hundred and No/100 ($1100.00) Dollars Attorney's fees on the liens hereinabove described, on or before January 2nd, 1940, payment therefor, this court retaining jurisdiction of the subject matter herein only to the extent necessary to give effect to this judgment and not otherwise.

It is further Ordered that if an additional hearing is had herein the attorney for petitioning creditor shall

be allowed an additional fee of One Hundred Fifty and No/100 ($150.00) Dollars.

This the 4th day of December, 1939.

T. Whitfield Davidson, Judge U. S. District Court for the Northern District of Texas.

Approved as to form. O. M. Street, Attorney for J. S. Garlington, et ux. Howard D. McElroy, Attorney for A. L. Wasson.

I hereby certify that the foregoing is a true copy of the original thereof now on file. Attest: December 28, 1940.

George W. Parker, Clerk, by Ida M. James, Deputy. (Filed December 6, 1940)

EXHIBIT B

IN COURT OF CIVIL APPEALS FOR THE ELEVENTH SUPREME JUDICIAL DISTRICT, EASTLAND, TEXAS

From the District Court of Howard County

No. 2250

J. S. Garlington, et ux,

vs.

S. L. Wasson

From the District Court of Howard County
Judgment—February 13, 1942

Opinion by Grissom, A. J.

This cause came on to be heard on the transcript of the record, and the same being inspected, the court finds that no briefs were filed by appellant and that said cause should be dismissed, and it is so ordered. It is further ordered that all costs incurred by reason of this appeal be and the same are hereby taxed against the appellants, J. S. Garlington and Jennie L. Garlington, principals, I. H. Sumner and Gordon Buchanan, sureties on their appeal bond, for which let execution issue, and that this decision be certified below for observance.

(fol. 122)

IN COURT OF CIVIL APPEALS OF TEXAS

No. 2250

J. S. Garlington, et ux, Appellants,

vs.

A. L. Wasson, Appellee

Appeal from the District Court of Howard County

Opinion—Filed February 13, 1942

This cause was submitted on the transcript and statement of facts January 9, 1942. No Briefs have been filed. Appellants filed a motion for permission to file briefs January 7, 1942. No briefs were submitted with the motion and no briefs have yet been presented. The motion was filing briefs. It was heretofore overruled because it failed to show good cause for not filing briefs within the time provided by law.

Under the circumstances it is the custom of this court to dismiss the appeal in accordance with the opinion of the Supreme Court in Haynes vs. J. M. Radford Groc. Co., 14 SW (2d) 811. Se Ammon vs. DeMayo, 148 SW (2d) 945; Lancaster vs. Lancaster, 153 SW (2d) 269; LeSure vs. Sanders, 153 SW (2d) 722.

The appeal is dismissed.

(S) Clyde Grissom, Associate Justice.

February 13, 1942.

EXHIBIT C

IN SUPREME COURT OF TEXAS

April 22, 1942

App. No. 26294

vs.

J. S. Garlington et ux.

A. L. Wasson

From Howard County, Eleventh District

Certified Copy of Judgment of the Supreme Court of Texas on Application for Writ of Error

Filed May 25, 1942

This day came on to be heard the application of petitioners for a writ of error to the Court of Civil Appeals for the Eleventh District and the same having been duly considered, it is ordered that the application be refused; that the applicants, J. S. Garlington and Jennie L. Garlington, and sureties, I. H. Sumner and Gordon Buchanan, pay all costs incurred on this application.

EXHIBIT D

IN SUPREME COURT OF TEXAS

App. No. 26294

J. S. Garlington et ux.

vs.

A. L. Wasson

From Howard County 11th Dist.

Order Refusing Application for Writ of Error

April 22, 1942

This day came on to be heard the application of Petitioners for a writ of error to the Court of Civil Appeals for the Eleventh District, and the same having been duly considered, it is ordered that the application be refused; that applicants, J. S. Garlington and Jennie L. Garlington, and sureties, I. H. Sumner and Gordon Buchanan, pay all costs incurred on this application.

EXHIBIT E

IN SUPREME COURT OF TEAS

(Title omitted)

Order Overruling Motion for Rehearing
May 20, 1942

The motion for rehearing filed herein, having heretofore been submitted to the Court, and after due consideration of same, it is ordered that the said motion be, and is hereby overruled.